

GOVERNMENT



GAZETTE

**EXTRAORDINARY
PUBLISHED BY AUTHORITY**

Gangtok

Friday 14th September, 2018

No. 493

**GOVERNMENT OF SIKKIM
LEGAL METROLOGY UNIT AND CONSUMER PROTECTION CELL
FOOD, CIVIL SUPPLIES AND CONSUMER AFFAIRS DEPARTMENT
PALZOR STADIUM ROAD
GANGTOK-737101**

No. 07/LMU/FCS&CA

Dated: 07.09.2018

NOTIFICATION

In exercise of the powers conferred by sub-section (2) of section 30 of the Consumer Protection Act, 1986 (68 of 1986), and in supersession of the rules made to give effect to sections 10(1)(a), 10(1)(b), 10(3), 16(1)(a), 16(1)(b) and 16(2), the State Government hereby makes the following rules, namely:-

1. Short title, extent and commencement. —

- (1) These rules may be called the Consumer Protection (Appointment, Salary, Allowances and Conditions of Service of President and Members of the State Commission and District Forum) Rules, 2018.
- (2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - In these rules, unless the context otherwise requires, —

- (a) 'Act' means the Consumer Protection Act, 1986 (68 of 1986);
- (b) 'District Forum' means the District Consumer Disputes Redressal Forum established under clause (a) of section 9 of the Act;
- (c) 'Member' means a Member of the District Forum appointed under clause (b) of sub-section (1) of section 10 of the Act; or a Member of the State Commission appointed under clause (b) of sub-section (1) of section 16 of the Act, as the case may be;
- (d) 'President' means the President of the District Forum appointed under clause (a) of sub-section (1) of section 10 of the Act; or the President of the State Commission appointed under clause (a) of sub-section (1) of Section 16 of the Act, as the case may be;
- (e) 'Selection committee' means the Selection Committee constituted under section 10(1A) or section 16(1A), as the case may be;

- (f) 'State Commission' means the State Consumer Disputes Redressal Commission established under clause (b) of section 9 of the Act;
- (g) Words and expressions used in these rules and not defined but defined in the Act shall have the same meaning respectively assigned to them in the Act.

3. Mode of appointments in District Fora —

- (1) President of a District Forum shall be appointed either (a) by direct appointment or (b) on deputation from amongst the serving District Judges.

Provided that appointment of a serving District Judge shall not be made without the concurrence of the High Court.

Provided further that where the pendency of complaints at the starting of the year before a District Forum does not exceed five hundred or the average number of complaints filed in the last three years does not exceed five hundred, the appointment may be made on part-time basis.

- (2) Notwithstanding the provisions in sub-rule (1), if the State Government is of the view that the work can be managed by assigning additional charge to a serving District Judge, it may do so with the concurrence of the Chief Justice of the High Court.

- (3) Members of the District Forum shall be appointed on whole-time basis or part-time basis.

Provided that the number of posts for whole-time appointment shall be identified by the State Government in consultation with the President of the State Commission.

Provided further that where the pendency of complaints at the starting of the year before a District Forum does not exceed five hundred or the average number of complaints filed in the last three years does not exceed five hundred, the appointment may be made on part-time basis.

- (4) In the event of pendency of complaints at the starting of the year before a District Forum exceeding one thousand five hundred or the average number of complaints filed in the last three years exceeding one thousand, the State Government may establish an additional District Forum in the District.

- (5) Presidents and Members appointed on part-time basis shall function for such number of days in a week as may be decided by the President of the State Commission in consultation with the State Government, taking into consideration the work load of the District Forum.

Provided that the number of working days shall not be less than two in a week and the President and Members, appointed on part-time basis, will observe regular office hours on their working days.

- (6) Presidents and Members while acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

4. Mode of appointment in the State Commission. —

- (1) President of the State Commission may be appointed on whole time basis or by assigning additional charge to a sitting judge of the High Court.

Provided that appointment of a sitting High Court Judge, either on whole time basis or on additional charge basis, shall not be made without the concurrence of the Chief Justice of the High Court.

(2) Members of the State Commission shall be appointed either by (a) direct appointment or (b) on deputation from amongst the Government servants, who are qualified to hold the post.

Provided that a serving judicial officer shall not be appointed without concurrence of the Chief Justice of the High Court.

Provided further that where the pendency of complaints and appeals at the starting of the year before the State Commission does not exceed five hundred or the average number of complaints and appeals filed in the last three years does not exceed five hundred, the appointment may be made on part-time basis.

(3) Members appointed on part-time basis shall function for such number of days in a week as may be decided by the President of the State Commission in consultation with the State Government, taking into consideration the work load of the District Forum.

Provided that the number of working days shall not be less than two in a week and the Members, appointed on part-time basis, will observe regular office hours on their working days.

(4) Presidents and Members while acting or purporting to act in pursuance of any of the provisions of this Act, shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code.

5. Selection of the President and Members of District Fora. –

- (1) Matters relating to appointment of President and Members of District Fora shall be processed by the President of the State Commission.
- (2) The process of appointments shall be initiated at least six months before the vacancy arises.
- (3) If a post falls vacant due to resignation or death of a President or a Member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.
- (4) The Advertisement of a vacancy, inviting applications for the posts from eligible candidates will be published in leading newspapers and also circulated in such other manner as the President of the State Commission may deem appropriate.
- (5) Selection of President and Members of District Fora shall be made by the Selection Committee constituted under sub-section (1A) of section 10 of the Act.
- (6) After scrutiny of the applications received till the last date specified for receipt of applications, list of eligible candidates along with their applications shall be placed before the Selection Committee.
- (7) The Selection Committee shall short-list the applicants in the following manner, namely—
 - (a) in case of candidates having judicial background, on the basis of the judgments and other judicial orders passed by such candidates;

- (b) in case of candidates having experience of working under the Central Government or any State Government or an undertaking under the Central Government or the State Government, on the basis of their available Annual Confidential Reports for the last ten years and their experience relevant to the post applied for;
- (c) in other cases, on the basis of performance in a written test consisting of two papers as per the following scheme. The qualifying marks in each paper shall be 50%:

Paper	Topics	Nature of test	Max. marks	Duration
Paper-I	<ul style="list-style-type: none"> (a) General Knowledge and current affairs (b) Knowledge of Constitution of India (c) Knowledge of various related Laws as indicated in the schedule. 	Objective Type	100	2 hours
Paper-II	<ul style="list-style-type: none"> (a) One Essay on topics chosen from issues on trade & commerce, consumer related issues or Public Affairs (b) One case study of a consumer case for testing the abilities of analysis and cogent drafting of orders. 	Descriptive type	100	3 hours

- (8) The selection committee shall interview all shortlisted candidates in which marks may be awarded giving due weightage to the personality, relevant past experience, knowledge of law, special achievements, aptitude and vision for the assignment to be taken up.
- (9) The selection committee shall recommend a panel of names of candidates for appointment as President or Member, as the case may be, from amongst the candidates in the order of merit for consideration of the State Government.
- (10) The State Government shall verify or cause to be verified the credentials and antecedents of the recommended candidates.
- (11) Every appointment of a President or Member shall be subject to submission of a certificate of physical fitness as indicated in the annexure signed by a civil surgeon or District Medical Officer.
- (12) Before appointment, the selected applicant shall have to furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as President or Member.

6. Selection of the President of the State Commission. –

- (1) The process of appointment shall be initiated by the State Government at least six months before the vacancy arises.

- (2) If a post falls vacant due to resignation or death of a President or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.
- (3) The Selection Committee constituted under sub-section (1A) of Section 16 of the Act, shall recommend, through a search and selection process after assessing the suitability on the basis of merit and experience, a candidate with another candidate in the waiting list, for consideration of the State Government.
- (4) The candidates under consideration shall be clear from the vigilance angle.
- (5) The State Government shall appoint the selected candidate after consultation with the Chief Justice of the High Court.
- (6) Every appointment of the President shall be subject to submission of a certificate of physical fitness as indicated in the Annexure signed by a Civil Surgeon or District Medical Officer.
- (7) Before appointment, the selected candidate shall have to furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as President.

7. Selection of Members of the State Commission. –

- (1) The process of appointments shall be initiated by the President of the State Commission at least six months before the vacancy arises.
- (2) If a post falls vacant due to resignation or death of a Member or creation of a new post, the process for filling the post shall be initiated immediately after the post has fallen vacant or is created, as the case may be.
- (3) The Advertisement of a vacancy, inviting applications for the posts from eligible candidates will be published in leading newspapers and also circulated in such other manner as the President of the State Commission may deem appropriate.
- (4) Selection of Members of the State Commission shall be made by the Selection Committee constituted under sub-section (1A) of section 16 of the Act
- (5) After scrutiny of the applications received till the last date specified for receipt of applications, a list of eligible candidates along with their applications shall be placed before the Selection Committee.
- (6) The Selection Committee shall short-list the applicants in the following manner, namely—
 - (a) in the case of candidates having judicial background, on the basis of the judgments and other judicial orders passed by such candidates;
 - (b) In the case of candidates having experience of working under the Central Government or any State Government or an undertaking under the Central Government or the State Government, on the basis of their available Annual Confidential Reports for the last ten years and their experience relevant to the post applied for;
 - (c) In other cases, on the basis of a written test of two papers as per the following scheme. The qualifying marks in each paper shall be 50%.

Paper	Topics	Nature of test	Max. marks	Duration
Paper-I	(a) General Knowledge and Current Affairs (b) Broad features of the Code of Civil Procedure (c) Knowledge Of various Consumer related Laws as indicated in the schedule. (d) Knowledge of Constitution of India	Objective Type	100	2 hours
Paper-II	a. One Essay on topics chosen from issues on trade & commerce, consumer related issues or Public Affairs b. One case study of a consumer case for testing the Abilities of analysis and cogent drafting of orders.	Descriptive type	100	3 hours

- (7) The Selection Committee shall interview all the shortlisted candidates and award marks with due weightage to the personality, relevant past experience, quality of the judgments, knowledge of law, special achievements, aptitude and vision for the assignment to be taken up.
- (8) The selection committee shall recommend a panel of names of candidates for appointment as Member from amongst the candidates in the order of merit for the consideration of the State Government.
- (9) The State Government shall, verify or cause to be verified the credentials and antecedents of the recommended candidates.
- (10) Every appointment of a Member shall be subject to submission of a certificate of physical fitness as indicated in the annexure signed by a civil surgeon or District Medical Officer to his medical fitness.
- (11) Before appointment, the selected candidate shall have to furnish an undertaking that he does not and will not have any such financial or other interest as is likely to affect prejudicially his functions as such Member.

8. Salaries/Remunerations of the whole-time President and Members of District Fora.

- (1) A serving District Judge, appointed on deputation basis, shall be entitled to pay and allowances of a District Judge in the super time scale of pay.
- (2) A whole-time President other than serving or retired District Judge shall receive a consolidated remuneration equivalent to pay at the minimum of the scale of pay of a District Judge plus other allowances as admissible.
- (3) A whole-time Member shall be paid a consolidated remuneration equal to the pay at the minimum of the scale of pay of a Deputy Secretary of the State Government plus other allowances as admissible.

- (4) Fixation of pay of the retired Government servants appointed to the posts of President or Members on whole time basis shall be on the basis of the pay last drawn reduced by the amount of pension plus other allowances as admissible to a re-employed pensioner;
- 5) There shall be an annual upward revision of the remuneration of whole-time appointees at the rate of 3%.

9. Salaries/Remunerations of the part-time President and Members of District Fora.

- (1) A part time President shall be paid a consolidated remuneration of rupees five thousand in class X cities, rupees four thousand in class Y cities and rupees three thousand in other places, per day of sitting.
- (2) A part time Member shall be paid a consolidated remuneration of rupees four thousand in X class cities, rupees three thousand and five hundred in Y class cities and rupees two thousand and five hundred in other places, per day of sitting.
- (3) Remuneration of the part-time appointees shall be reviewed every three years taking into consideration the consumer price index.
- (4) Remuneration in the case of appointments made on additional charge basis shall be governed by the relevant provisions in the Financial Rules.

10. Salaries/Remunerations of the whole-time President and Members of the State Commission.

- (1) President of the State Commission shall receive the salary, allowances and other perquisites as are admissible to a sitting judge of the High Court of the State.
- (2) A whole-time Member of the State Commission shall be paid a remuneration equivalent to the pay at minimum of the scale of pay of an Additional Secretary in the State Government and other allowances as admissible.

Provided that serving Government servants appointed on deputation basis shall be entitled to salary and allowances under the provisions applicable to deputationists.

Fixation of pay of the persons retired from Government service, appointed to the posts of President or Member on whole time basis, shall be on the basis of the pay last drawn reduced by the amount of pension.

11. Salaries/Remuneration of the part-time Members of the State Commission. –

- (1) A part-time Member of the State Commission shall be paid a consolidated remuneration of rupees five thousand in X class cities, rupees four thousand in Y class cities and rupees three thousand in other places, per day of sitting.
- (2) Remuneration of the part-time appointees shall be reviewed every three years taking into consideration the consumer price index.
- (3) Remuneration in the case of appointments made on additional charge basis shall be governed by the relevant provisions in the Financial Rules as amended.

12. Leave and Medical treatment and hospital facilities to the whole-time appointees:
Whole-time appointees shall be entitled to leave, LTC, medical treatment and hospital facilities as per the provisions applicable to Group A Government servants in the State Government.

13. The salary, remuneration and other allowances shall be defrayed out of the Consolidated Fund of the State Government and in the case of the Union Territories, from the Consolidated Fund of India.
14. The terms and conditions of the service of the President and the Members of the District Forum and the State Commission shall not be varied to their disadvantage during their tenure of office.
15. **Removal of President and Members of State Commission and District Fora from office in certain circumstances. —**
 - (1) The State Government may remove from office, the President or any Member, who,-
 - (a) has been adjudged as an insolvent; or
 - (b) has been convicted of an offence which, in the opinion of the State Government, involves moral turpitude; or
 - (c) has become physically or mentally incapable of acting as the President or the Member; or
 - (d) has acquired such financial or other interest as is likely to affect prejudicially his functions as the President or a Member; or
 - (e) has so abused his position as to render his continuance in office prejudicial to the public interest; or
 - (f) remains absent in three consecutive sittings except without leave or for reasons beyond his control.
 - (2) Notwithstanding anything contained in sub rule (1), the President of the State Commission shall not be removed from his office on the grounds specified in clauses (d), (e) and (f) of that sub-rule except after an inquiry held by a sitting Judge of the High Court nominated by the Chief Justice of the High Court in which the President of the State Commission has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and found guilty.
 - (3) Notwithstanding anything contained in sub rule (1) a Member of the State commission, President or Member of the District Forum shall not be removed from his office on the grounds specified in clauses (d), (e) and (f) of that sub-rule except after an inquiry held by a Member of the National Commission nominated by the President of the National Commission, in which the President or Member of the District Forum or the Member of the State Commission, as the case may be, has been informed of the charges against him and given a reasonable opportunity of being heard in respect of those charges and found guilty.
16. **Repeal –** All the earlier notifications, circulars, office orders or rules, if any, in respect with the Appointment, Salary, Allowances and Conditions of Service of President and Members of the State Commission and District Forum shall be repealed.

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